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In re Application of  
Caputo et al.  
Application No. 09/901,389  
Filed: July 9, 2001  
Attorney Docket C041473/0124196

DECISION GRANTING PTA REQUEST

This decision is in response to Applicants' "REQUEST FOR RECONSIDERATION UNDER 37 CFR 1.705(b)" filed on May March 10, 2006 requesting that the Patent Term Adjustment be adjusted from a determination of eight hundred and thirteen days (813) days to a determination of eight hundred and forty (841) days.

Applicants' request is **GRANTED-in-part**. The Office will also adjust the PTA calculation reflected in PAIR to reflect this decision. The actual determined amount of PTA is 842 days rather than applicants' requested amount of (841) days.

Applicant argues that the Office met the 14<sup>th</sup> month requirement on April 7, 2005 not March 23, 2005. Accordingly, applicants' assert that the proper amount of PTA for this period is 940 days. In addition, applicants assert that the April 7, 2005 Office action was replied to on August 1, 2005, a twenty-five day delay not thirty-nine day delay. Applicants assert that the IDS submission of October 14, 2005 was a seventy-four (74) day reduction.

Applicants' argument have been considered and deemed persuasive to the extent here indicated. A review of the record reflects that the Office mailed the March 23, 2005 Office action to the wrong address.<sup>1</sup> Accordingly, the Office action was re-mailed on April 7, 2005. The delay amounted to 941 days not 940 days.<sup>2</sup> In addition, the applicants are further correct on the fact the response mailed on August 1, 2005 was a twenty-five (25) day delay not thirty-nine (39) days. Applicant did not contest the 74 days reduction for submission of an IDS under 37 CFR 1.704(c)(8). Accordingly the correct amount of PTA at the time of the mailing of the notice of allowance is 842 days (941-74-25= 842).

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<sup>1</sup>Applicants had mailed a correspondence address change to the Office on June 30, 2003.

<sup>2</sup>The delay began on September 9, 2002 and ended on April 7, 2005, a nine hundred and forty-one day delay.

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After the mailing of this Office action, the Office will forward such application to the Office of Patent Publication for a prompt issuance of the patent. Any delays in not issuing the patent within four months of the payment of the issue fee under 37 CFR 1.704(a)(4) will be reflected in the issue notification letter that is mailed to applicants approximately three weeks prior to issuance of the patent.

The applicants have authorized payment of \$200.00 as the fee. No additional fees are required in the determination of this request.

Any questions concerning this determination should be directed to Kery Fries, Senior Legal Advisor, at 571-272-7757.

*Kery Fries*  
Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Adm.  
Office of Deputy Commissioner  
for Patent Examination Policy

cc: Adjusted PAIR calculation